

Stillaguamish
CR-103 Attachment A

Changes to proposed chapter 173-505 WAC and the reasons why, a filing as required by RCW 34.05.340(3)

WAC 173-505-010 General. In subsection (2) (b) the last half of the second sentence was deleted. The change was made to clarify the relationship of hydraulic continuity, impairment of instream flows, and provisions for junior water rights. The determination of hydraulic continuity and determination of impairment (effect on the flow or level of a stream or river) are two different questions. The presumption of hydraulic continuity was struck, as it is a fact specific inquiry.

WAC 173-505-020 Purpose. In subsection (2), the word reservation was made plural. The change was made because there are two stockwatering reservations. In subsection 3, the last sentence was modified to clearly state the rule's requirements do not replace statutory requirements. A commentator thought the rule supplanted or replace the statutory criteria for water right decision making and that is not the case. A sentence was added that the rule does not relieve anyone from compliance with relevant statutory requirements.

WAC 173-505-030 Definitions. A second sentence was added to the introductory language to clearly state that definitions in this section, if they are different than how the word is described in other water rules, are used for this chapter. The sentence added is "In the event that these definitions differ from those contained in related rules, the definitions presented here will supersede any others for this chapter."

The definition of "municipal water supplier" from the Statute was added because we deleted a definition of "public water supply". The term "municipal water supplier" is more precise and comports with the Municipal Water Law of 2003. The definition was added to facilitate users being able to locate terms instead of providing a statutory reference.

The definition of "municipal water supply purposes" from the Statute was added because we deleted a definition of "public water supply". The term "municipal water supply purposes" is more precise than "public water supply" and comports with the Municipal Water Law of 2003. The definition was added to facilitate users being able to locate terms instead of providing a statutory reference.

The definition of "public water system" was deleted and replace with "municipal water supplier". Some public water systems are not municipal water suppliers and that caused some commenter confusion related to the policy of requiring connection to public water system as compared to a municipal water supplier.

The definition of “reservation” was modified to more clearly state the effective date of a reservation, as well as the priority date of a given appropriation from a reservation, is the same as the effective date of this chapter.

The definition of “timely and reasonable” was deleted. The term as defined in the original proposal did not comport with the term as used and defined by Department of Health. The term is also one part of a municipal water suppliers’ duty to serve under RCW 43.20.260. To avoid confusion, we deleted the version in the rule.

WAC 173-505-040 Establishment of stream management units. The location description of the Jim Creek station had the wrong longitude. The longitude in the proposed rule was 122 03 07. The correct longitude is 122 03 06. The location of the station did not change.

WAC 173-505-070 Stream closures. In subsection (1) the language on hydraulic continuity of ground water and closure of surface water was clarified. The closure applies to ground water the withdrawal of which will have an effect on the flow or level of the rivers and streams.

In subsection (2) we list the exceptions to the closures. Originally, Ecology did not list section 060, lakes, because a lake is not a stream. However, a commenter was confused as to whether or not lakes were subject to the closure. Lakes are not subject to the closure so we added section 060 to the list of sections excepted from the closure to clearly state that lakes are not closed.

In subsection (3), first sentence, we changed the word “noninterruptable” to be “uninterruptible”. The change was made for consistency because uninterruptible is the word used in the rest of the chapter. The words mean the same thing.

WAC 173-505-080 Future stock watering. In subsection (1)(b) the second sentence was changed to read "Uses that meet the following conditions shall be considered to qualify as direct stock watering from a stream:" The change was made to recognize that stockwatering tanks that meet the criteria of the rule are recognizes as a direct diversion and not a change of water right.

In subsection (2), the volume of the reserve was changed from two to twenty. An error was discovered in calculating the reserve. The change of two to twenty is substantially different from the proposed rule. The effect of the change is to allow more stockwatering in the future than would have been satisfied with two acre-feet. Also in subsection (2) the language related to a daily limit on use of water the ground water reserve was deleted. The language deleted is “of up to five thousand gallons per day for individual users.” The language was deleted because of a recent Attorney General’s informal opinion that stockwatering via the ground water permit exempt well is unlimited as to a daily volume. The informal opinion is contrary to previous guidance on this issue. Because of the uncertainty surrounding this issue the language was removed.

WAC 173-505-090 Reservation of permit-exempt ground water for future domestic uses. Subsection (2) (a) was modified to more clearly state the water from the reservation is for single or group domestic use. The new language is “This reservation is for either single or small group domestic uses, as defined in WAC 173-505-030(5).”

A new subsection (2)(d) was written to replace the old (2)(d)(i) to reflect the policy local government’s recognize the reservation to activate it if they make decisions regarding water supply for buildings requiring potable water or a decision on the platting of property and the project proponent will use water from the reserve. This idea was in the original proposed rule as requiring local governments to make the terms and conditions of the reservation a term and condition of a building permit. That language was deleted.

Subsection (2) (e) was modified to clearly state that an applicant for a building permit or subdivision approval proposing a water use under the reservation must comply with the terms of the reservation. The reference to subsection “b” was deleted as it is not applicable to the water user.

A new subsection (2) (f) was drafted to replace the old (2) (e) to make a better connection to the RCW 43.20.260 and the Municipal Water Law of 2003. The policy or requirement is the same; the new language is more precise and removed confusion regarding public water systems that are not subject to RCW 43.20.260.

The old subsection (2) (f) was deleted in response to commentators who said it was unreasonable, unworkable and could not be enforced. This is the section of the proposed rule that would have required water wells constructed after the effective date of the rule, and within the service area of a public water system to be abandoned if public water supply was extended into the area. Ecology recognized it was problematic and deleted the language.

The old subsection (3) related to Ecology providing notice of the reservation was deleted. The same idea with different language is reflected in new subsection (2) (d). In the proposed subsection (4), second sentence, the word “only” was struck from the sentence. The word was struck because the list of other water sources was not exclusive. There are other ways to meet water needs than “only” the ones listed.

In subsection (4) (b) the language “The county or city shall provide ecology with an annual report on the number of building permits and subdivision approvals that will use water from the reservation. This report must also identify the type of use associated with each approval.” was deleted. Several comments noted the language appeared to be an unfunded mandate from the State and or the State was trying to get the local governments to do the reservation accounting. It was also noted that Ecology lacked statutory authority to compel the local governments to provide the data. It was not and is not Ecology’s intent to have the local governments do the reservation accounting. To avoid confusion, the language was deleted. Ecology will still use the information from the local governments; however it is not a requirement of the rule.

Proposed subsection (6) was deleted because of confusion it created. The policy is that if conditions change, Ecology will reevaluate the reservation of water and its use. Ecology was not specific that this reevaluation would be done by rule making. The section was deleted since proposed WAC 173-505-170, Regulation Review provides for an opportunity to review the rule. The deleted language was duplicative.

Subsection 070(a) was modified to add the idea that accounting for water use under the reservation can include empirical data on actual water use.

WAC 173-505-100 Maximum allocations. In subsection (2), first sentence, the reference to a USGS gage on the Stillaguamish River at Silvana was changed to refer to an Ecology gage at the same location.

Subsection (3) was modified to clearly state that existing water rights are not subject to instream flow requirements. The language created confusion as to whether or not existing rights would be subject to instream flows. That is not the case. The proposed rule in section 010(3) says existing rights are not affected. For the rule to be internally consistent, consistent with statutes, and avoid confusion, the change was made.

WAC 173-505-110 Future permitting actions. In subsection (1) (c) the word “additional” was deleted. The word implied that existing studies may not be sufficient and that is not the case. To avoid confusion the change was made.

WAC 173-505-120 Alternative sources of water. In subsection (2) the words “the proposed” was replaced with “a new”. The originally proposed language was not clear that alternative sources of water can be used instead of a new source.